

Cite as Det. No. 04-0207, 24 WTD 212 (2005)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In The Matter of the Petition For Correction)	<u>D E T E R M I N A T I O N</u>
of Assessment of)	
)	No. 04-0207
)	
...)	Registration No. . . .
)	Use Tax Assessment
)	. . .
)	Docket No. . . .

- [1] RULE 178; RCW 82.12.0251: USE TAX – PERSONAL VEHICLE – LICENSED IN ANOTHER STATE – “NONRESIDENT” – DEFINITION. Because the use tax and licensing statutes relate to one another and involve the same subject matter, the Department reads these together. Therefore, even though the use tax statutes do not define the term “nonresident,” and the Department has not issued a rule defining that term, the Department will look to the “resident” definition in the vehicle licensing provisions in RCW 46.16.028(1).
- [2] RULE 178; RCW 82.12.0251: USE TAX – PERSONAL VEHICLE – DOMICILE – RESIDENCE -- FACTORS. A person may have more than one residence or home for use tax and MVET purposes. Significant factors to consider when determining whether an individual has established a residence in Washington include: (1) the amount of time spent in Washington; (2) the nature and use of property in this state; (3) domestic, civil, business, and social activities in Washington; (4) the intention when absent to return to Washington, and (5) the nature and use of property in other states.
- [3] RULE 178; RCW 82.12.0251: USE TAX – EXEMPTION -- PERSONAL VEHICLE – BONA-FIDE RESIDENT – OUT-OF-STATE PURCHASE AND USE FOR MORE THAN 90 DAYS BEFORE ENTERING WASHINGTON. A bona fide resident of Washington who purchased and used a vehicle outside of Washington for more than 90 days before entering this state would be exempt from payment of use tax on that vehicle.

Headnotes are provided as a convenience for the reader and are not in any way a part of the decision or in any way to be used in construing or interpreting this Determination.

. . . (Taxpayer) objects to the Department of Revenue's conclusion that she was a Washington resident and to the assessment of use tax on her vehicle, which carried Oregon tags. We hold that she was not a Washington resident, and use tax was not due on her vehicle.¹

ISSUES:

The pertinent issues raised are as follows:²

1. If Taxpayer was a resident of Washington, was Taxpayer exempt from use tax on her vehicle under RCW 82.12.0251 as a bona fide resident of Washington who acquired and used the vehicle in another state in which she was a resident for more than 90 days prior to entering Washington?
2. Was Taxpayer exempt from use tax on her vehicle under RCW 82.12.0251 as a nonresident of Washington?

FINDINGS OF FACT:

Bauer, A.L.J -- The Compliance Division (Compliance) of the Department of Revenue (Department) contacted Taxpayer, acting on an anonymous tip that Taxpayer was a [foreign] citizen who was routinely parked and residing at a Washington business address with a car bearing an Oregon license plate. Taxpayer disputed the claim that she was a Washington resident liable for sales or use tax on her vehicle. Taxpayer, however, did not provide documentation to Compliance to support her claims by the deadline given to her.³ Based on her failure to provide documentation to support nonresidency in Washington, Compliance concluded she was a bona fide Washington resident. She likewise had not provided an invoice from the purchase of her vehicle. The above-referenced assessment was issued on October 2, 2003 in the total amount of \$. . . , which amount included use tax (\$. . .), interest up to the date of the assessment (\$. . .), and penalties (\$. . .). The use tax was based on the car's value according to Kelley Blue Book. Taxpayer disputes the assessment in its entirety and has not paid it.

Based on evidence supplied in this case by both Compliance and Taxpayer, we find the following:

For four years Taxpayer and her husband have owned a home at . . . , Oregon. She, her husband, and her stepdaughter normally reside in this home together, except as explained below.

¹ Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

² Other issues raised by Taxpayer, which need not be considered here because of our holding concerning Taxpayer's residency, related to the value of the vehicle and the appropriateness of penalties and interest.

³ Because Taxpayer's first language is [not English], she was uncomfortable engaging in a controversial issue in English before having the opportunity to familiarize herself with her rights and responsibilities under Washington law.

Taxpayer worked for [Company], headquartered in . . . , Oregon, in 2002. Taxpayer's normal commute from her [Oregon] home to her regularly-assigned office in . . . , Oregon is . . . about 1 hour's driving time.

In 2003, [Company] opened an office in . . . , Washington.⁴ To help with this opening, Taxpayer was temporarily assigned to her employer's . . . , Washington site during the first half of 2003. There is conflicting evidence in the record as to how long Taxpayer worked in Washington. Washington's Employment Security records⁵ include her as a full-time Washington employee for all four quarters of 2003.

Her employer, however, states she worked for a "temporary period of time during the first half of 2003," but transitioned back to the . . . , Oregon facility on a full time basis in the summer of 2003. Taxpayer states her employer is correct in that she moved back to the . . . , Oregon office either in late August or early September 2003.

Taxpayer's husband and stepdaughter remained in the [Oregon] home during the time she worked in Washington. Because Taxpayer's commute to the . . . , Washington office from her home in Oregon was . . . (3 hrs, 10 minutes driving time), Taxpayer did not return to her [Oregon] home every night, but stayed over at the . . . , Washington office twice a week. Taxpayer explains she usually had meetings at the . . . , Oregon office on Monday, and worked at the . . . , Washington office from Tuesday through Friday. She returned to her . . . , Oregon home on Wednesday and Friday nights. Taxpayer slept in a back room of her employer's office in . . . , Washington on Tuesday and Thursday nights. This back room had a mattress on the floor where she could use her sleeping bag.

Taxpayer is a [foreign] national legally in this country. She is registered with the INS, with her home address at . . . , Oregon. She and her husband both file and pay "full year resident" income taxes in Oregon, and Taxpayer has submitted their joint returns for calendar years 2002 and 2003.

There is no evidence that Taxpayer worked in Washington before the beginning of calendar year 2003. Taxpayer purchased her [vehicle] here at issue on September 2, 2002 from [dealer] in . . . , Oregon.

ANALYSIS:

RCW 82.12.0251 provides the following use tax exemption:

The provisions of this [use tax] chapter shall not apply . . . in respect to the use by a **nonresident** of Washington of a motor vehicle . . . which is registered or licensed under

⁴ . . . [Company's] office in . . . , Oregon is . . . approximately 4 hours' driving time from its office in . . . , [Washington].

⁵ Procured by Compliance.

the laws of the state of his or her residence, and which is not required to be registered or licensed under the laws of Washington, . . . or in respect to the use of . . . private automobiles by a **bona fide resident** of Washington . . . if such articles were acquired and used by such person in another state while a bona fide resident thereof and such acquisition and use occurred more than ninety days prior to the time he or she entered Washington.

(Bracketed material and emphasis added.) Under RCW 82.12.0251, nonresidents of Washington are not subject to use tax on their vehicles if the vehicles are properly licensed in their state of residence and are not required to be licensed in Washington. Similarly, bona fide residents of this state will not be subject to use tax if their vehicles were acquired and used in another state in which they were residents for more than 90 days prior to entering Washington.

[1] The use tax provision at issue in this case refers to the licensing statutes. In this respect, the statutes are related.⁶ Because the two statutes relate to one another and involve the same subject matter, we should "read the sections as constituting one law to the end that a harmonious total schema which maintains the integrity of both is derived." *Beach v. Board of Adjustment*, 73 Wn.2d 343, 346, 438 P.2d 617 (1968). Therefore, even though the use tax statutes do not define the term "nonresident," and the Department has not issued a rule defining that term, Det. No. 96-049, 16 WTD 177 (1996), established that the Department will look to the "resident" definition in the vehicle licensing provisions in RCW 46.16.028(1). That statute states:

For the purposes of vehicle license registration, a resident is a person who manifests an intent to live or be located in this state on more than a temporary or transient basis. Evidence of residency includes but is not limited to:

- (a) Becoming a registered voter in this state; or
- (b) Receiving benefits under one of the Washington public assistance programs; or
- (c) Declaring that he or she is a resident for the purpose of obtaining a state license or tuition fees at resident rates.

[2] Det. 96-049, *supra*, went on to explain that the term "resident" for use tax and MVET purposes is not synonymous with domicile. A person may have more than one residence or home for use tax and MVET purposes. Whether a person is a resident of this state, and not here on a temporary or transient basis, is fact specific. Significant factors to be considered in determining whether a person has established a residence or home in this state, as opposed to a temporary dwelling, include: (1) the amount of time spent in Washington; (2) the nature and use of property in this state; (3) domestic, civil, business, and social activities in Washington; (4) the

⁶RCW 46.85.060(4) also provides that the Department of Licensing must consult with the Department of Revenue with respect to the adoption of rules regarding the nonresident exemption.

intention when absent to return to Washington; and (5) the nature and use of property in other states.

In looking to the facts of this case, we are convinced that Taxpayer did not become a resident of Washington when she worked here. She did not become a registered voter, receive public assistance benefits, or declare herself a resident for the purpose of obtaining a state license or tuition fees at resident rates as described in RCW 46.16.028(1). While she spent at least four working days a week in Washington, she brought little property with her other than that necessary for transportation or overnight stays. Outside of her work, there is no evidence she pursued any domestic, civil, or social activities in Washington. Her home and family remained in Oregon, where she maintained a residence.

As a nonresident of Washington, who was here on a temporary or transient basis, Taxpayer's personal vehicle was not required to be licensed in Washington. Because Taxpayer was a nonresident of Washington, and because her vehicle was registered or licensed under the laws of Oregon, the state of her residence, we hold that she qualified for a Washington use tax exemption under RCW 82.12.0251.

[3] We note that, even if Taxpayer had become a resident of Washington when she entered this state to work in January 2003, she would still have qualified for exemption under the "bona fide resident" portion of RCW 82.12.0251. This is because Taxpayer's vehicle was purchased and used in the state of her Oregon residence for more than 90 days prior to entering Washington.

DECISION AND DISPOSITION:

Taxpayer's petition for correction of assessment is granted.

DATED this 2nd day of September 2004.